



## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 54**

**[CC Docket No. 02-6; FCC 17-139]**

#### **Schools and Libraries Universal Service Support Mechanism**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission adopts, on an emergency basis, temporary rules to provide immediate relief to schools and libraries contending with the devastation caused by Hurricanes Harvey, Irma, and Maria, which struck the United States and its territories in August and September 2017. These temporary rules make available targeted support to schools and libraries that are forced to rebuild facilities and replace equipment damaged by the Hurricanes, and provide increased flexibility for eligible services to be restored through service substitutions. The rules also provide support for schools that have increased their total student enrollments by 5 percent or more by taking in students displaced by the Hurricanes

**DATES:** *Effective date:* The rules are effective on [Insert date of publication in the Federal Register].

*Applicability date:* These rules were applicable on October 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** Aaron Garza, Wireline Competition Bureau, (202) 418-1175 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order in CC Docket No. 02-6; FCC 17-139, adopted on October 26, 2017 and released on October 30, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, D.C. 20554, or at the following Internet address: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db1030/FCC-17-139A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1030/FCC-17-139A1.pdf).

## **I. INTRODUCTION**

1. In this Order, the Federal Communications Commission (Commission) adopts, on an emergency basis, temporary rules to provide immediate relief to schools and libraries contending with the

devastation caused by Hurricanes Harvey, Irma, and Maria (Hurricanes), which struck the United States and its territories in August and September 2017. These temporary rules make available targeted support to schools and libraries that are forced to rebuild facilities and replace equipment damaged by the Hurricanes, and provide increased flexibility for eligible services to be restored through service substitutions. We also make additional E-rate support available for schools that are incurring additional costs for eligible services, e.g., for increased bandwidth demand, because they are serving students that have been displaced by the storms, even though they may not be contending with substantial physical damage caused by the Hurricanes. As explained herein, we find that the exigent circumstances faced by the schools and libraries contending with the consequences of these natural disasters constitute good cause to adopt these temporary rules without notice and comment.

## **II. DISCUSSION**

2. The temporary rules adopted in this Order provide relief to two categories of applicants: (a) schools and libraries located in counties designated by FEMA as eligible for individual disaster assistance (Directly Impacted Areas); and (b) schools that are incurring additional costs because their student counts have increased by 5 percent or more because they are serving displaced students.

3. For schools and libraries that are located in the Directly Impacted Areas, and that comply with the certification requirements described below, we make additional E-rate discounts available for the purchase of services and equipment that were disrupted, damaged, or destroyed by the Hurricanes by: (a) opening a second Funding Year (FY) 2017 Application Window; and (b) resetting per-school, per-library five-year budgets for Category Two services. We also provide additional flexibility for these applicants to request service substitutions for a service or product that has been disrupted, destroyed or rendered unusable by the Hurricanes.

4. For schools that are incurring additional costs to provide services for students displaced by the Hurricanes, and that comply with the certification requirements described below, we make additional funding available to defray some of those increased costs by permitting the schools to file a supplemental FCC Form 471 to request additional E-rate discounts.

5. All relief granted by this Order is subject to the parameters and limitations stated herein, and conditioned on compliance with all E-rate program rules that are not specifically modified herein. To that end, we adopt additional measures to protect the Universal Service Fund from waste, fraud, and abuse. We also remind applicants that they remain subject to audits and investigations by the Universal Service Administrative Company (USAC) and the Commission, and will be held responsible for retaining all records related to any relief provided under this Order.

6. The Commission adopts temporary rules to assist schools and libraries that need to rebuild facilities and replace equipment destroyed by the Hurricanes, and take other steps necessary to reinstate E-rate eligible services for the students they serve. To ensure that the adopted measures reach those contending with the most severe damage caused by the Hurricanes, we limit the relief provided by these measures to schools and libraries located in the Directly Impacted Areas that certify that: (a) they are located in counties designated by FEMA as eligible for individual disaster assistance; (b) the schools or libraries incurred substantial damage to E-rate eligible services as a result of one or more of the Hurricanes; (c) any additional E-rate funding received pursuant to this Order will be used solely to restore E-rate eligible services to the level of functionality that immediately preceded the Hurricanes; (d) other resources (e.g., insurance, public assistance monies from FEMA, support from community organizations or donations) are not available to restore the E-rate eligible services to their prior functionality; and (e) additional E-rate funding requested pursuant to this Order will be returned to the Universal Service Fund if funding from other sources causes any E-rate funding disbursed to exceed the charges paid for restoring the E-rate eligible services. Schools and libraries that are located in the Directly Impacted Areas and submit the required certification are referred to herein as Directly Impacted Applicants.

7. Section 54.504(d) of the Commission's rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality; (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling

FCC Form 470. For Directly Impacted Applicants that need to replace a service or product that has been disrupted, destroyed, or rendered unusable by the Hurricanes, we modify this rule to exclude the requirement that the substituted service or product must have the same functionality as the service or product that it is replacing. This modification will allow Directly Impacted Applicants the maximum flexibility to substitute services based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa), so that they may use already approved E-rate funding to replace damaged or destroyed equipment and restore services, subject to the limitations stated herein. We believe this additional flexibility will allow schools and libraries, given their specific understanding of their circumstances, to use funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives § 54.504(d)(1)(i) of the Commission's rules for Directly Impacted Applicants while keeping the remaining aspects of our service substitution rule intact. Directly Impacted Applicants must continue to ensure that a service substitution: (a) does not violate any contract provisions; (b) does not violate state or local procurement laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470. Directly Impacted Applicants must also request approval of service substitutions by submitting a service substitution request to USAC.

8. The Hurricanes have caused widespread disruptions in service for schools and libraries in the Directly Impacted Areas, and some Directly Impacted Applicants may need to rebuild facilities and replace equipment to restore E-rate eligible services to their pre-Hurricane levels of functionality. Consistent with the E-rate program's mission to ensure that schools and libraries have access to high-speed broadband sufficient to support digital learning, we direct USAC to open a second FY 2017 application window to allow Directly Impacted Applicants to request additional E-rate discounts for the purchase of replacement products and services (Second FY 2017 Application Window), subject to the parameters and limitations in this Order.

9. Second FY 2017 Application Window Dates. Given the urgent need that many Directly Impacted Applicants have for funding to rebuild and restore eligible services, the Second FY 2017

Application Window shall open 14 days after the release of this Order and will remain open for 30 days. We find that this 30-day window, opening 14 days after the release date of this Order, will provide enough time for Directly Impacted Applicants participating in the Second FY 2017 Application Window to complete any necessary competitive bidding, per the requirements below, and apply for FY 2017 funding needed to restore essential E-rate eligible services.

10. We recognize that some Directly Impacted Applicants, particularly applicants in Puerto Rico and the USVI, may not be able to participate in the Second FY 2017 Application Window because they will still lack access to the electricity and communications networks required to do so. Directly Impacted Applicants contending with widespread destruction to property and surrounding facilities may also require additional time to assess the full extent of the damage they have incurred, and determine the resources they will need replace and restore E-rate eligible services. We recognize that the relief provided in this Order may not address the needs of all Directly Impacted Applicants, and assure them that the Second FY 2017 Application Window does not mark the end of our efforts. We direct the Wireline Competition Bureau (Bureau) to work with USAC in the coming months to formulate a plan for providing additional relief to Directly Impacted Applicants who are unable to participate in the Second FY 2017 Application Window, and may not be able to replace and restore E-rate eligible services through the additional measures adopted in this Order and the ordinary application process for FY 2018. When considering the form and timing of these additional measures, we direct the Bureau to take into consideration factors such as when the Directly Impacted Applicants regained access to electricity and other resources necessary to make effective use of E-rate eligible services, and how the additional measures will function within the overall administration of the program.

11. Competitive Bidding. Competitive bidding is a cornerstone of the E-rate program. Our competitive bidding rules ensure that applicants are informed of all the options available to them whenever they seek a new service contract, ensure that service providers have sufficient information to submit a responsive proposal, generate the most efficient pricing for eligible services, and guard against waste, fraud, and abuse. To ensure the most efficient use of the additional funds made available for the

Second FY 2017 Application Window, and as a safeguard against waste, fraud, and abuse, we retain our competitive bidding rules for the Second FY 2017 Application Window with two limited modifications.

12. First, a Directly Impacted Applicant may submit an FCC Form 471 during the Second FY 2017 Application Window requesting E-rate discounts without initiating a new competitive bidding process for the requested services or equipment if the Directly Impacted Applicant: (a) has already sought bids for the services or equipment by posting an FCC Form 470; (b) received a Funding Commitment Decision Letter (FCDL) from USAC approving an FY 2017 funding request that relied on that FCC Form 470, or has such an FY 2017 funding request pending; and (c) requests additional E-rate discounts during the Second FY 2017 Application Window to purchase the same services or equipment on substantially similar terms and conditions as the contract originated by the existing FCC Form 470. This modification is intended to expedite the restoration of services or the replacement of equipment that were already purchased by, and delivered to, Directly Impacted Applicants for FY 2017, but destroyed or otherwise affected by the Hurricanes. Directly Impacted Applicants that wish to avail themselves of this option must submit the following information in the Narrative Section of the relevant FCC Form 471 funding request: (a) the identification numbers for the FY 2017 FCC Form 471 and funding request that previously relied on the FCC Form 470; (b) a statement confirming that the services or equipment for which the applicant previously requested E-rate discounts in FY 2017 were delivered prior to the Hurricanes, and subsequently disrupted, destroyed, or damaged by the Hurricanes; and (c) a statement confirming that the requested additional E-rate discounts are to replace those services or equipment by the pertinent service implementation deadline.

13. Second, for all other funding requests submitted during the Second FY 2017 Application Window, we modify the requirement that applicants wait to enter a contract with a service provider until 28 days have passed after posting an FCC Form 470. Specifically, we will require Directly Impacted Applicants that wish to seek additional E-rate discounts during the Second FY 2017 Application Window to wait only 14 days prior to selecting a service provider and filing an FCC Form 471 requesting E-rate support. We find that reducing the mandatory waiting period balances the need for quick and decisive

action to restore E-rate eligible services to schools and libraries with our obligations to ensure the most efficient use of universal service funds and protect the program against waste, fraud, and abuse.

14. Discount Rate. Under the Commission's rules, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible Category One (C1) services and between 20 percent and 85 percent of the pre-discount price of eligible Category Two (C2) services, based on indicators of poverty, as well as rural or urban status. For the Second FY 2017 Application Window only, we increase the discount rate for all Directly Impacted Applicants to the maximum discount rate for both C1 and C2 services, excluding voice services. All Directly Impacted Applicants will, therefore, receive a 90 percent discount for C1 services, other than voices services, and an 85 percent discount for C2 services for these requests. We conclude that increasing the discount rate for Directly Impacted Applicants will provide needed funding to immediately assist such applicants with restoring E-rate eligible services.

15. E-rate applicants may request support for C2 services pursuant to our rules that establish a pre-discount budget of \$150 per student over five years for schools, and a pre-discount budget of \$2.30 or \$5.00 per square foot for libraries depending on their location. It is up to each school and library to determine how to allocate funds from their C2 budgets over a five-year period. Five-year C2 budgets were first instituted in FY 2015. It is therefore possible that some schools and libraries had already expended all or most of their C2 budgets by the time the Hurricanes hit in August and September 2017. Accordingly, some Directly Impacted Applicants may have little to no funds remaining in their school and library budgets to replace internal connections destroyed by the Hurricanes.

16. The Commission has recognized the importance of ensuring that sufficient funding is available for school and library internal connections, such as wireless access points, to ensure that high-speed broadband connectivity is effectively distributed to classrooms. Accordingly, we reset the five-year C2 budgets for all Directly Impacted Applicants. For those Directly Impacted Applicants that request additional E-rate discounts for C2 services during the Second FY 2017 Application Window, those requests will start the five-year clock on their budgets. For all other Directly Impacted Applicants, the

five-year clock will begin in the first year that they request E-rate discounts for C2 services after the effective date of this Order.

17. Some schools that are located in Directly Impacted Areas but did not incur substantial damage, or that are located outside of the Directly Impacted Areas, may be incurring additional costs due to an influx of displaced students (Indirectly Impacted Schools). The influx of additional students may increase the resource needs of the school, may increase a school's National School Lunch Program (NSLP) rate, or may affect a school's C2 budget. To assist these Indirectly Impacted Schools, and support the educational needs of students displaced by the Hurricanes, we will allow schools that certify that their student count has increased by 5 percent or more due to an influx of displaced students to submit a supplementary FCC Form 471 during the Second FY 2017 Application Window to request additional funding. Indirectly Impacted Schools requesting this additional funding must certify: (a) that their student count for FY 2017 has increased by 5 percent or more because of students displaced by the Hurricanes; (b) the number of students they served during the original FY 2017 Application Window, the number of additional students they are serving as-of the Second FY 2017 Application Window, and their total student population as-of the Second FY 2017 Application Window; (c) that they experienced an associated increase in demand for services for which they have submitted an FY 2017 funding request; (d) that the additional funding requested is necessary to serve these additional, unanticipated needs; and (e) that funding is not available from another source (e.g., insurance, public assistance monies from FEMA, support from community organizations or donations) to cover the increased costs. We also require schools to maintain documentation in support of this increased number in accordance with our recordkeeping requirements.

18. Indirectly Impacted Schools requesting additional funds pursuant to this Order may avail themselves of the competitive bidding modifications established for the Second FY 2017 Application Window. We will carefully monitor the use of funds disbursed to ensure that all support is utilized in accordance with Commission rules and to ensure that service providers do not charge unjust or unreasonable rates. We reserve the right to recover any monies that are not used for their intended



purposes or, upon review, that we determine were used wastefully.

19. We are committed to guarding against waste, fraud, and abuse. Although we establish the limited, temporary rules described herein, we adopt steps to ensure program integrity, including enhanced audit procedures. Except where noted herein, we apply all existing processes and procedures for applying for and receiving E-rate discounts. We will require USAC to recover funds that we discover were not used properly through its normal processes. We also direct USAC to incorporate into its processes appropriate safeguards and audit measures to prevent and detect waste, fraud, and abuse related to the particular provisions we adopt here. We emphasize that we retain the discretion to evaluate the use of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

20. Sunset of Temporary Rules. We will reevaluate the temporary rule changes adopted herein before the opening of the FY 2018 filing window. Absent further action by the Commission, the temporary rule changes adopted herein will not apply to future funding years, including FY 2018, except insofar as this order resets five-year C2 budgets for Directly Impacted Applicants. We believe that reevaluating the sufficiency and efficacy of these temporary rules is a necessary safeguard against waste, fraud, and abuse going forward.

21. Record Retention. We require any school, library, or consortium using the temporary rules adopted herein to maintain documentation in support of its filing in accordance with our recordkeeping requirements. Applicants and service providers relying on these temporary rules are responsible for maintaining records that demonstrate their need and eligibility to rely on the temporary rules, including records supporting their certification that they received substantial damage as a result of the Hurricanes.

22. Audits. All beneficiaries and service providers receiving E-rate money are subject to potential audit, and those that receive more than \$500,000 will automatically be audited by USAC to

ensure the funds are used for their intended purposes. All eligible telecommunications carriers, service providers, or beneficiaries requesting support under these temporary rules shall be subject to audit or investigation by the Commission's Office of Inspector General or other authorized federal or state governmental agency and, upon request, must make available any documentation and records necessary to verify compliance with these rules.

23. Necessary Resources. We retain the requirement that applicants certify that they have secured access to all of the resources necessary to make effective use of the services purchased. Applicants eligible to request relief pursuant to this Order are cautioned that they may not request E-rate support for eligible services that they cannot actually use by the pertinent service implementation deadline because they do not have the required facilities, power, or other resources necessary to make effective use of the services.

24. Prohibition on Free Services. We retain the requirement that all applicants pay their entire non-discounted portion of the cost of any services or products received through E-rate. Our rules prohibit the provision of free services to an eligible entity by a service provider that is also providing discounted services to the entity. Moreover, our rules state that the provision of free services or products unrelated to the supported service or product constitutes a rebate of the non-discount portion of the supported services.

25. Section 553 of the Administrative Procedures Act permits an agency to implement rules without public notice and opportunity for comment "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." The Commission's rules additionally permit us to render an order effective upon release where good cause warrants. The Hurricanes have caused extensive damage in areas of Texas, Florida, and Georgia, and throughout Puerto Rico and the USVI, creating an urgent and immediate need for the relief provided by this Order. While we believe that public notice requirements are an essential part of our rulemaking process, the need for prompt attention to the victims and quick restoration of services presents good cause

to forgo notice and comment on these limited, temporary rules and to make this Order effective immediately upon release. The temporary rules that we adopt herein constitute an important step in the Nation's response to these natural disasters, as well as the ability of the E-rate program to fulfill its purpose of ensuring that schools and libraries have affordable access to the high-speed broadband necessary for students to succeed in their educational pursuits and beyond. Further, this Order does not mandate new burdens or obligations. Accordingly, no entity will be adversely affected by making the Order effective upon its release. We find, therefore, that good cause exists to forgo notice and comment on these rules and make the temporary rules adopted by this Order effective immediately upon the release date of this Order. We delegate authority to the Bureau to work with USAC to make the necessary programmatic changes to implement this Order.

26. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

27. The Commission will send a copy of this Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). For the reasons stated herein, we find good cause for the rule changes made by this Order to take effect upon the release of this Order, see 5 U.S.C. 808(2).

### **III. ORDERING CLAUSES**

28. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 201-205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 254, 303(r), and 403 this Order IS ADOPTED, and the temporary rules SHALL BECOME EFFECTIVE immediately upon release of this Order, pursuant to 5 U.S.C. 408, 553(d)(3); 47 CFR 1.103(a), 1.427(b).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

[FR Doc. 2017-25406 Filed: 11/22/2017 8:45 am; Publication Date: 11/24/2017]